

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Quikrete Companies

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:48 I illegal deductions

Employer: Quikrete Companies, One Securities Centre, Atlanta, GA 30305

Date of Hearing: September 3, 2015

Case No.: 50670

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$798.66 in unpaid wages for hours worked in the week ending May 29, 2015. He states that the employer withheld his final pay as he had used more vacation time than he had accrued upon separation of employment.

The employer agrees they withheld the claimant's final paycheck because the claimant had used more vacation time than he had accrued upon his separation from the company on May 29, 2015. However, the claimant signed a vacation waiver upon hire that authorized the claimant to do so.

The hearing was left open until 4:30pm on September 11, 2015, for the employer to submit a copy of the claimant's final pay stub. The employer submitted the documentation on September 10, 2015. The pay stub shows the claimant's final net pay should have been \$664.52.

FINDINGS OF FACT

The parties agree the employer withheld the claimant's final paycheck because he had used more vacation time than he had accrued upon separation of employment.

Upon hire, the claimant signed a waiver notifying the claimant that "In the event that the employee terminates before the end of the year, any unearned vacation time already paid will be deducted from the employee's final payroll check" and authorizing the employer to "deduct unearned vacation time for which I have already been paid from my final payroll check."

RSA 275:48 Withholding of Wages. –

I. No employer may withhold or divert any portion of an employee's wages unless:

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

The employer admitted they did not have a written request from the claimant at the time of the original request that would authorize the employer to deduct any amount of vacation pay that had been used but not earned, at the time of separation, as required by RSA 275:48.

A generic, blanket-type waiver signed upon hire does not meet the requirements of RSA 275:48 to allow an employer to deduct any used, but unearned vacation pay from an employee's final wages.

Because the employer did not comply with the requirements of RSA 275:48, it is found they illegally deducted the unused vacation time from the claimant's final wages.

The employer submitted the claimant's final pay stub, showing the net pay due to the claimant is \$664.52.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$664.52.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met his burden in this claim.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that the employer illegally withheld his final wages, and that he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$664.52.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$664.52, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: September 24, 2015

MJD/kdc